

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

T.S., by and through his next friend,
N.O.; and G.A.;
*individually and on behalf of all others
similarly situated,*

Plaintiffs,

V.

The Burke Foundation
d/b/a Burke Center for Youth,

Defendant.

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CASE NO. 1:19-cv-809-RP

JOINT MOTION TO AMEND SCHEDULING ORDER

Plaintiffs T.S. and G.A., and Defendant The Burke Foundation, file this Joint Motion to Amend the Scheduling Order to accommodate pending ADR efforts. In support of the Motion, the parties show the following:

1. Plaintiffs are former residents of Pathfinders Ranch, a residential treatment center operated by Defendant for adolescent boys with severe emotional disorders. Plaintiffs allege that Defendant required children under its care, including Plaintiffs, to perform unpaid manual labor in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., (“FLSA”) and the Texas common law theories of quantum meruit, unjust enrichment, and money had and received. Plaintiffs bring their FLSA claims as an “opt-in” collective action, and their Texas common law claims as an “opt-out” class action under Federal Rule of Civil Procedure 23, on behalf of themselves and all other similarly-situated persons.

2. The complex nature of this case has necessitated flexibility with respect to scheduling matters. A trial date was not set during the initial pretrial conference to accommodate potential

modifications to the scheduling order. (Dkt. 14, ¶ 9.) Scheduling in this matter was designed to cover two phases of litigation: 1. The FLSA Notice Period and subsequent discovery related to Plaintiffs' motion for class certification under Rule 23; and 2. a second phase starting with Plaintiffs' motion for class certification under Rule 23, and including additional merits discovery and preparation for trial following a decision regarding Rule 23 class certification. (*See, e.g.* Dkt. 71.)

3. On November 7, 2023, the parties filed a joint motion requesting that the deadline for Plaintiffs' motion for Rule 23 class certification be extended a second time due to ongoing settlement negotiations. (Dkt. 104.) The Court entered the parties' proposed amended scheduling order deferring the class certification deadline until February 13, 2024. (Dkt. 105.)

4. The parties subsequently advanced settlement discussions and determined that engaging in mediation would likely be a productive method of alternative dispute resolution. Because settlement efforts in this matter involve multiple, geographically dispersed parties as well as a third-party insurance claims adjuster, the parties were unable to find a mutually workable mediation option prior to the February 13th briefing deadline. All necessary parties have agreed to attend a full-day mediation with provider Jack Wisdom of Martin, Disiere, Jefferson & Wisdom, LLP on April 4, 2024.

5. The parties accordingly request that Plaintiffs' deadline to file a motion for Rule 23 class certification be extended until May 6, 2024 in order to allow for mediation prior to investment of significant resources in briefing related to the class certification motion.

6. This extension is not being sought for the purposes of delay, but rather in the interest of efficiency through endeavoring to resolve this lawsuit with minimal further burden to the parties and the Court. The proposed extension will not deleteriously affect any other deadlines in this matter, since the case is not yet set for trial, and all other remaining deadlines in the operative Scheduling Order are tied to the date of any ruling on Rule 23 class certification.

7. The parties hereby jointly request that the Court enter their attached Proposed Amended Scheduling Order, which extends Plaintiffs' deadline to file a motion for class certification under Rule 23 to May 6, 2024.

Conclusion

Wherefore, premises considered, the parties respectfully request that the Court enter the attached Proposed Amended Scheduling Order.

Respectfully Submitted,

By: /s/ Anna Bocchini
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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Anna Bocchini